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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 127th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 November 1992, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.127/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

Initial report of New Zealand (CAT/C/12/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Bisley, Mr. Rider, Mr. Bilkey and Mr. Barker (New Zealand) took places at the Committee table.

2. Mr. BISLEY (New Zealand) thanked the Committee for its words of praise and emphasized how seriously New Zealand took its international obligations in the matter under consideration. Referring to the question of compensation (p. 6 of the report, CAT/C/12/Add.2), he described in broad outline the accident compensation procedure in force which provided rapid and equitable compensation without the person concerned having to initiate costly proceedings. The term accident was interpreted in a very broad sense and, for example, covered rape or torture. Such compensation did not in any way prejudge eventual criminal proceedings.

3. With respect to the reservation entered by New Zealand to article 14 of the Convention, he considered that the principle of compatibility with the purpose and goal of the treaty applied to multilateral treaties and that, consequently, New Zealand had not acted contrary to international law.

4. Replying to a question about the distinction made under New Zealand law between a serious crime and a less serious offence, he explained that the difference depended on the court before which the case was brought, namely, a District Court or High Court. In any event, torture was a crime that would be judged by a High Court.

5. Referring to paragraph 1.9 of the report concerning the international instruments to which New Zealand was a party, he said that his country had signed the Convention on the Rights of the Child and that ratification procedure had been initiated.

6. With respect to paragraph 1.10 of the report, he said that the number of persons sentenced for murder was as follows: 35 in 1987, 29 in 1988, 21 in 1989 and 30 in 1990. He had no figures on the number of prison deaths but noted that the number of suicides in prison had declined considerably, from 2.88 per 1,000 in 1985 to 0.96 per 1,000 in 1991 (i.e. 5 deaths in 1991). That improvement was apparently explained by the fact that prisoners in difficulty were looked after better.

7. Referring to paragraphs 1.14 and 1.15, he explained that judges of the High Court and the Court of Appeal were appointed by the Governor General. The Court of Appeal was a permanent body consisting of six members, three of whom heard each case. In reply to a question concerning trials without jury, he explained that jury trials were compulsory for all offences punishable by 14 years' imprisonment or more. Any act of torture came under that heading. As for the Court of Appeal, its was competent only to interpret points of law or hear appeals against a sentence.

8. Replying to a further question, he explained that the Police Complaints Authority consisted of a lawyer appointed by the Governor General and a supporting staff. At the present time the Authority comprised a retired High Court judge and his deputy, a High Court judge, and three investigators. The Authority was empowered to receive complaints concerning the behaviour of the police and could take action on its own initiative if it considered that a death or a serious physical injury involving a police officer should be investigated.

9. With respect to the number of cases dealt with by the Authority, he said that 462 investigations had been conducted over a period of 2 years and 2 police officers had been brought to trial; only 1 had been convicted. Fifty-two other complaints had been upheld but no proceedings initiated. Other sanctions could also be imposed, such as psychological assistance for police officers and reprimands.

10. In reply to a question from Mr. Gil Lavedra about the need to obtain the Attorney General's consent before proceedings could be brought under the Crimes of Torture Act, he explained that the purpose of that requirement was to prevent abuses but that, in the case of torture, proceedings under that Act were mandatory.

11. Replying to a question from the Chairman, he considered that there was no contradiction between article 3 of the Convention and New Zealand's national security regulations. Provisional regulations had been introduced between 16 January and 30 April 1991 owing to the Gulf war; during that period two persons had been sentenced to expulsion but detained pending a review of their case; at no time had the Convention against Torture been violated. Those provisional regulations were, in any case, hedged about with all kinds of safeguards, and the persons in question had been defended by a lawyer, had been assigned an interpreter and had been able to telephone to the UNHCR regional office at Canberra (Australia).

12. In reply to a question concerning the legal basis of the non-refoulement of persons likely to be tortured if they were sent back to their country, he explained that the relevant text was section 10 of the Crimes of Torture Act. Information booklets had been prepared for the use of frontier control officials explaining the Government's international obligations in respect of refugees and emphasizing the non-refoulement requirement.

13. Referring to paragraphs 5.1 and 5.2 of the report, and in reply to a question about what would happen in the event of passive nationality and why New Zealand did not align its legislation with the provisions of article 5 of the Convention, he explained that it would be contrary to New Zealand's established legal practice to take jurisdiction to deal with offences on the basis of the nationality of the victim.

14. In response to a series of questions concerning the powers of the police to arrest and detain suspects, he explained that arrest was subject to a number of safeguards, in that the person arrested had to be informed of the reasons for his arrest, had the right to consult a lawyer immediately and was informed of that right; moreover, the arrest had to be justified in short order in the event of application for a writ of habeas corpus. In practice,

any person who was arrested was brought before a court within 24 hours of his arrest. The police received specific training in that respect and in general respected the law on the declaration of rights. He also explained that the practice of holding persons incommunicado did not exist in New Zealand.

15. Referring to questions connected with the application of article 8 of the Convention, he explained that New Zealand law provided for extradition only to countries which were members of the Commonwealth or which had concluded an extradition treaty with New Zealand. However, the Crimes of Torture Act stated that the New Zealand authorities were competent to bring proceedings against anyone who was suspected of having committed an offence under article 4 of the Convention and who happened to be in New Zealand, regardless of his nationality.

16. As several questions had been asked concerning article 10 of the Convention, he would provide the Committee with a copy of the new training handbook as soon as it was published. The police were regularly informed, through the Police Gazette, about matters involving, for example, the difficulties experienced by refugees and persons requesting asylum. He mentioned a new training module devoted specifically to the Convention against Torture and the Crimes of Torture Act, and explained that it was used in all prisons. He also informed the Committee that the Order of New Zealand Physicians had published a code of ethics which was distributed to all medical personnel. The same had been done by the Nursing Association.

17. Replying to a question concerning the Children, Young Persons and Their Families Act, he explained that by "child" was meant any boy or girl under 14 years of age, and that the term "youth" was used to designate any boy or girl of over 14 but less than 17 years of age who had never married.

18. Referring to paragraph 11.4 of the report in reply to a question from Mr. Sorensen, he admitted that the question of compulsory treatment in psychiatric hospitals was an extremely delicate one. The Mental Health Act of 1969 had provided for compulsory treatment and had been replaced on 1 November 1992, by a new Act that limited such treatment, defined very carefully the rights of patients and provided for legal remedies.

19. In reply to a question from Mr. Ben Ammar, he confirmed that the Human Rights Commission actively protected human rights and said he would make a copy of the Human Rights Commission Act available.

20. Mr. Bisley, Mr. Rider, Mr. Bilkey and Mr. Barker (New Zealand) withdrew.

The first part (public) of the meeting rose at 3.45 p.m.